



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FEB 28 2003

File: WAC 01 008 50472 Office: California Service Center Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: [REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner engages in the business of printing and publishing fine art. It desires to employ the beneficiary as a contact worker for one year. The Department of Labor determined that a temporary certification by the Secretary of Labor could be made. The director determined that the petitioner's need for the beneficiary's services is not a one-time occurrence.

On appeal, counsel states that the situation in this case is in fact a one-time occurrence.

Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii), defines an H-2B temporary worker as:

an alien...having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession....

Matter of Artee Corp., 18 I&N Dec. 366 (Comm. 1982), codified in current regulations at 8 C.F.R. § 214.2(h)(6)(ii), specified that the test for determining whether an alien is coming "temporarily" to the United States to "perform temporary services or labor" is whether the need of the petitioner for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling. See 55 Fed. Reg. 2616 (1990).

As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. § 214.2(h)(6)(ii)(B).

The petition indicates that the employment is a one-time occurrence and the temporary need is unpredictable.

The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(1) states that for the nature of the petitioner's need to be a one-time occurrence, the petitioner must establish that it will not need workers to perform the services or labor in the future, or that it has an

employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker.

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Combines multiple photographic film images onto single film to assist in film assembly process for fine-art serigraph printing. Aligns negative or positive film image over unexposed film (duplicating or contact) and places film assembly into or on top of vacuum frame. Sets time controls and activates vacuum to maintain contact between original and unexposed film. Assists with color separation by hand. Work will be closely supervised.

In his letter dated October 2, 2000, the petitioner states that his son will resume the position of contact worker once he returns to the company after finishing his studies at the University of California and taking a two-month summer vacation.

Counsel states on appeal that the petitioner's son's leave of absence is a temporary event of short duration that created the need for a temporary worker. Therefore, the petitioner's son's leave of absence from the position is temporary, and the petitioner has shown that the need for a contact worker is a one-time occurrence. The petitioner has established that the nature of its need for a contact worker is temporary in nature.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.